

Amendments to Senate Bill No. 294
1st Reading Copy

Requested by Senator Jesse Laslovich

For the Senate Judiciary Committee

Prepared by Pat Murdo
February 17, 2007 (11:04am)

1. Title, line 4 through line 5.
Following: "CLARIFYING" on line 4
Strike: remainder of line 4 through "CLARIFYING" on line 5
2. Title, line 6 through line 7.
Strike: "SECTIONS" on line 6
Insert: "SECTION"
Strike: the second "AND" on line 6 through "72-5-317" on line 7
3. Page 2, line 24.
Strike: line 24 in its entirety
4. Page 2, line 25.
Strike: "(b)"
Insert: "(6)"
5. Page 2, line 26.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsection
6. Page 2, line 29 through page 3, line 26.
Strike: section 2 in its entirety
Renumber: subsequent section

- END -

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



BRIAN SCHWEITZER
GOVERNOR

JOAN MILES
DIRECTOR

STATE OF MONTANA

www.dphhs.mt.gov

February 21, 2007

To: Senate Judiciary Committee
Senator Dan Harrington

From: Kelly Williams, Administrator- Senior and Long Term Care
Rick Bartos, Chief-Adult Protective Services

R BARTOS

**Subject: Senate Bill 294
Act Clarify Guardianship Laws**

Senate Bill 294 is up for consideration by the Senate Judiciary Committee. Senator Laslovich has agreed to carry the following amendment:

Amendment to Senate Bill No. 294

For Senate Judiciary Committee

1. Title, line 4.

Following: "CLARIFYING" on line 4

Strike: remainder of line 4 through "CLARIFYING" on line 5

2. Page 2.

Strike: All of line 24

Following: line 24

Strike: "(b)"

Insert: "(6)"

Renumber subsequent subsections accordingly.

3. Page 3, line 15.

Following: "sought."

Delete: remainder of line 15 through "consent." on line 16.

-End-

(OVER)

What does the amendment do?

Answer:

The amendment deletes that portion of the bill that required the state department to provide consent to accept a guardianship appointment from the District Court. The Court is free to appoint the department.

What remains in the bill?

Answer:

1. An agency of the state named as guardian is not:
 - a) legally obligated to provide funds for the incapacitated person; or
 - b) liable to third person for acts of the incapacitated person during the guardianship.

Why is this necessary?

Answer:

1. The bill clarifies that a person is not entitled to state funds or programs simply because of a guardianship relationship. The person must meet the eligibility requirements for a specific program, such as Medicaid, housing, etc. just as any other state citizen. The state (as guardian) would be obligated to apply for these programs on behalf of the ward and attempt to secure these programs.
2. The bill clarifies that the state would enjoy the same protection against liability claims from third parties for the acts of the incapacitated person during the guardianship as does all other appointed guardianships.

Section 72-5-321, MCA states:

72-5-321. Powers and duties of guardian of incapacitated person. (1) *The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to the guardian's possession and control, as required by the court or by court rule.*

(2) *A full guardian of an incapacitated person has the same powers, rights, and duties respecting the ward that a parent has respecting an unemancipated minor child, **except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship**. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:*

The bill would reassert that the state as guardian enjoys the same third party liability claim protection.

SENATE BILL NO. 294

INTRODUCED BY D. HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING ~~THE CIRCUMSTANCES UNDER WHICH AN AGENCY~~
~~OF THE STATE MAY BE APPOINTED AS A GUARDIAN; CLARIFYING~~ THE RESPONSIBILITY OF AN
AGENCY OF THE STATE APPOINTED AS A GUARDIAN; AND AMENDING SECTIONS ~~72-5-312 AND~~
~~72-5-347~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-5-312, MCA, is amended to read:

"72-5-312. Who may be guardian -- priorities. (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private, nonprofit corporation nominated by the incapacitated person; if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom ~~he~~ the incapacitated person has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of ~~such the~~ private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of ~~such the~~ association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the incapacitated person who is caring for ~~him~~ the incapacitated person or is paying benefits to him the incapacitated person.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation ~~who or which~~ that would be disqualified under subsections (4)(a) through (4)(c).

(5) ~~Subject to subsection (6),~~ if the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, ~~notwithstanding the provisions of subsection (4).~~ Whenever ~~Whenever~~ If an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. ~~Whenever~~ If a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency.

~~(6) (a) The court may not appoint an agency of the state as guardian without the agency's consent.~~

~~(b)~~ (6) (b) An agency of the state named as guardian is not:

~~(a)~~ (a) legally obligated to provide funds for the incapacitated person; or

~~(b)~~ (b) liable to third persons for acts of the incapacitated person during the guardianship."

~~Section 2. Section 72-5-317, MCA, is amended to read:~~

~~"72-5-317. Temporary guardians. (1) If an incapacitated person has no does not have a guardian and~~

~~4 an emergency exists, the court may exercise the power of a guardian pending notice and hearing~~

2 (2) If an appointed guardian is not effectively performing his the guardian's duties or if there is no
 3 appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate
 4 action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified
 5 period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian, depending
 6 on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with
 7 more powers than are required by the circumstances necessitating the appointment. The order of appointment
 8 of a temporary guardian ~~shall~~ must state whether a full or limited temporary guardianship is being created and,
 9 in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

10 (3) ~~in case~~ If there is no person available and willing to act as temporary guardian for an incapacitated
 11 person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian
 12 pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity ~~who~~
 13 that would otherwise be ineligible under that ~~provision~~ subsection to act as guardian. This subsection does not
 14 permit the appointment of a person or entity ~~who that~~ has an actual conflict of interest in regard to the purpose
 15 for which the temporary guardianship is sought. The court may not appoint an agency of the state without the
 16 agency's consent. A temporary guardian ~~who~~ is otherwise ineligible shall serve until ~~a an eligible~~ person or entity
 17 ~~who is not ineligible to serve as guardian and who is otherwise qualified to be guardian~~ is appointed by the court
 18 to act as temporary guardian, but ~~in no case~~ may ~~he~~ not serve for longer than 6 months.

19 (4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any
 20 permanent guardian previously appointed by the court is suspended ~~so as~~ as long as a temporary guardian has
 21 authority. A temporary limited guardian is entitled to exercise ~~such the~~ the powers ~~as that~~ as are specifically granted to
 22 him in the order of appointment, and the power of any permanent guardian previously appointed by the court to
 23 exercise those powers is suspended ~~so as~~ as long as the temporary limited guardian has authority. The court by
 24 specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited
 25 guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the
 26 ~~court requires. In other respects, the provisions of this code concerning guardians apply to temporary guardians."~~

27

28 NEW SECTION. Section 8. Saving clause. [This act] does not affect rights and duties that matured,
 29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

30

- END -



Crow Country

Office of the Chairman

CROW TRIBAL EXECUTIVE BRANCH

Bacheeitchche Avenue

P.O. BOX 159

Crow Agency, MT 59022

Phone: (406) 638-3715, Fax: (406) 638-3773

Carl E. Venne, Chairman
Cedric Black Eagle, Vice Chairman
Andrew Old Elk, Secretary
Darrin Old Coyote, Vice Secretary

February 22, 2007

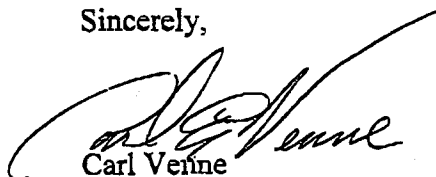
Senator Jesse Laslovich, Chair
Senate Judiciary Committee
State Capitol
Helena, Montana 59620

Dear Senator Laslovich:

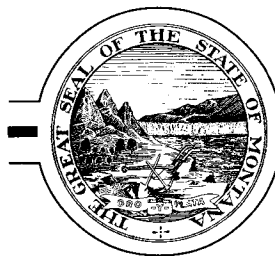
Please support SB 545, sponsored by Senator Frank Smith. The Hardin Correctional Facility is vital to the economy and the safety of our region.

Thank you.

Sincerely,


Carl Venne

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



BRIAN SCHWEITZER
GOVERNOR

JOAN MILES
DIRECTOR

STATE OF MONTANA

(406) 444-5900
FAX (406) 444-5956
www.dphhs@mt.gov

CHILD AND FAMILY SERVICES DIVISION
PO BOX 8005
HELENA, MT 59604-8005

To: Sen. Jesse Laslovich, Chair
Senate Judiciary Committee

From: Shirley K. Brown, M.A., J.D.
Administrator, Child and Family Services Division

Re: SB 546

Date: February 22, 2007

At the end of the hearing on SB 546, Sen. McGee asked that I provide the Committee with the data incorporated into my testimony in support of the bill. That data is as follows:

1. The definition of child abuse or neglect includes, among other things, exposing a child to the criminal distribution of dangerous drugs, the criminal production or manufacture of dangerous drugs, or the operation of an unlawful clandestine laboratory.
 - For SFY06, child protective services investigatory workers substantiated reports of this category of child abuse/neglect involving 56 children.
 - 23 of the children were below the age of 6
 - 38 of the children were below the age of 10
2. The Child and Family Services Division has been tracking parental drug involvement of the children in foster care since January 1, 2006. During that time, the numbers have been very consistent.
 - Of the children in out-of-home care on November 20, 2006, parents of 2/3 of the children in foster care had drug/alcohol involvement.
 - 49.5% of the 2/3 had involvement with meth
 - 28.10 of the 2/3 had involvement with marijuana
 - 13.4% of the 2/3 had involvement with prescription drugs

- When looking at the total number of children in foster care on November 20, 2006:
 - 32.6% of the parents had involvement with meth
 - 18.5% of the parents had involvement with marijuana
 - 8.8% of the parents had involvement with prescription drugs
- 3. Of the children who entered out-of-home care during the calendar year 2006 (the period for which the Division has been tracking parental drug involvement): 38.1% of the children had parents involved with meth and the average age of those children is 7 years of age.
- 4. As of January 9, 2007, 83 babies/children in foster care were placed because they were drug-impacted infants.
 - Drug-impacted means the babies tested positive for dangerous drugs at birth
 - This number constitutes almost 5% of the children in care on that date
 - 78 were placed directly from the hospital
 - 5 went home and were placed within a short period of time
 - Based upon information received from field supervisors, approximately 30% to 40% of the 83 babies/children had siblings in foster care at the time the baby was placed in foster care.

I hope this information is helpful to the Committee members when taking executive action of SB 546.

C: Sen. John Esp